December 29, 1999, the Workers' Compensation Appeal Board (WCAB) affirmed, stating it consolidated Claimant's appeals for the sake of judicial economy. The WCAB gave Respondent's expert report the weight of cross-examined testimony. The WCAB acknowledged Petitioner's October 31, 1997 Review Medical Petition but affirmed the November 30, 1997 Decision where the WCJ opined over medical evidence in place of Utilization Review, as enacted in the June 30, 1996 amended Act.

Petitioner filed a union benefits claim and the union paid medical expenses and wages from its health and welfare fund, but never enforced Petitioner's rights by investigating or granting Petitioner a grievance hearing.

The union's health and welfare fund is an ERISA plan and whose trustees, Joe Schmid, the union business agent, and Anthony Simoes, Respondent's management employee, may have acted in breach of their fiduciary duty.

Petitioner reasonably believes that Respondent's actions constitute witness retaliation against him, for 1992 reporting of illegal stickers on trucks and 1996 notifying OSHA about the chemical accident. The union plan pays Petitioner over $1,000 less each month in pension benefits, as he was forced to retire one year earl when the union failed to investigate and made no effort to enforce his rights

In 2001, pursuant to Petitioner's efforts, OSHA requested and Respondent produced the specific and material Chemrex MSDS scientific evidence and Petitioner's HAPPI medical records, including conclusions finding Petitioner unfit to return to work, which OSHA released to Petitioner.

September 2001, Petitioner filed a Claim, with the Pennsylvania department of labor, alleging that Respondent knowingly and fraudulently contested his

Claim for Benefits in 1996 and requested a hearing to admit evidence to support Petitioner's allegations of Respondent's fraud. Petitioner reasonably alleged that self-insured Respondent/employer made a bad faith contest by refusing to pay Petitioner's wages, medical bills and attorney fees under the Act.

The Department of Labor granted Petitioner a hearing before Judge Henry in November 7, 2001, to consider Petitioner's material and non-cumulative evidence. Respondent never respond to Petitioner's allegations of fraud. The Notice to attend the hearing expressly stated that failure to address the allegations raised in the petition are deemed admissions. The court failed to permit cross-examined testimony.

March 26, 2002, the WCJ entered an Order denying the claim petition in accord with his findings of fact, which contained material errors, as follows:

FF#1 relied on the wrong 1996 filing date;
FF#2 erred in finding Respondent timely and erred in finding Respondent responsive;
FF#3 relied on J Vallely's 1997 errors of fact;
FF# 4 & 5 drew legal inferences unsupported by substantive, admissible record evidence.

Judge Henry did not address Respondent's failure to respond to allegations of fraud, a deemed admission, and upheld Respondent's affirmative defenses, which are supported by judicial errors of fact and inadmissible hearsay, to deny Petitioner's claim.

July 29, 2003, the WCAB entered an Opinion and Order, which upheld Respondent's affirmative defenses and noted Petitioner's failure to Request a Section 426 Rehearing within eighteen (18) months.

November 24, 2003, the Commonwealth Court *sua sponte* reviewed Petitioner's Reply Brief and entered an Order striking it as untimely filed.

December 17, 2003 the Commonwealth Court of Pennsylvania entered an Order affirming the

Decision of the WCAB, accompanied by an unreported *Memorandum* Opinion.

February 19, 2004, having considered Petitioner's Application for Reconsideration before the court *en Banc* and Respondent's Answer, Reconsideration was denied.

March 9, 2004, the Commonwealth Court considered petitioner's request to report the opinion.

March 23, 2005, the Supreme Court of Pennsylvania denied *Allocatur* to review the Decisions of the Commonwealth Court and Petitioner filed a Petition for Reconsideration.

April 19, 2005, the Supreme Court of Pennsylvania entered an Order denying Reconsideration of its *Allocatur* denial.

Petitioner hereby appeals the orders entered in state court denying him disability benefits under the Workers Compensation Act and all applicable law, contracts and agreements.

SUMMARY OF THE ARGUMENT

The Pennsylvania Courts lacked jurisdiction to enter Decisions and Orders on Respondent's untimely Notice of Denial, as Petitioner's right to payment for medical treatment and disability benefits vested by operation of law in twenty days, after which time Pennsylvania courts were divested of subject matter jurisdiction over the workers' compensation claim.

The state courts failed to address Petitioner's allegations that Respondent perpetrated perjury and fraud on the court, to evade its liability for Petitioner's exposure, including medical treatment.

Respondent similarly attempted to evade its legal responsibility, challenged in a civil action, where the court chastised an arbiter "dispense[ing] his own brand of industrial justice" January 31,1979, at 78 cv 791 WDPA, by enforcing all applicable laws:

> "The provisions of the Vehicle Code, obviously designed and intended by the Pennsylvania Legislature to promote the safe and proper use of its highways, constitute the law and, of course, the public policy of Pennsylvania." J. Diamond

The courts here violated Petitioner's substantive right to due process by inequitable application of laws controlling this matter.

Selective enforcement of subject matter jurisdiction is an impermissible violation of the fourteenth amendment.

Courts here prejudiced Petitioner by failing to:

1) admit or consider relevant evidence;
2) act on Respondent's withholding of reports essential to Petitioner's claim;
3) act on Petitioner's undisputed allegations that Respondent committed perjury by submitting false evidence; and

4) entertain an appeal of Petitioner's claim.

Appellate courts failed to correct errors in the WCJ findings of fact, most notably October 15, 1997, where the WCJ misquoted Respondent's report, an "objected to" incorrect hearsay document referencing a version of the chemical inconsistent with its MSDS.

Petitioner's union failed its duty to seek enforcement of the rights and duties of the parties under contracts and agreements with Respondent, an apparent conflict of interest by trustees of the union's health and welfare ERISA plan, where Petitioner was unable to get a hearing before the grievance committee due to correspondence by Respondent's management employee trustee and the union's business agent trustee. The union's failure to investigate Petitioner's claim or to grant him a grievance hearing was fatal to Petitioner's claim. Self-insured Respondent and the union's ERISA plan realized economic benefit, at Petitioner's expense.

Respondent violated its settlement agreement, to comply with 29 CFR 1910.1200, federal regulation of exposure to toxic and hazardous substance, by refusing to pay for Petitioner's medical treatment.

Respondent, by refusing to treat Petitioner for chemical exposure and withholding MSDS information on a federally regulated "right to know" chemical, violated Petitioner's rights under:

1) the workers' compensation act,
2) state and federal transportation regulations,
3) the hazardous material "right to know" law,
4) its settlement agreement with OSHA,
5) its Union contract,
6) the Union Constitution,
7) Petitioner's employee ERISA benefits,
8) a court order in WDPA at 78 cv 791 H, enforcing National Master Freight Agreement.

The state courts prejudiced Petitioner by failing to enforce Respondent's agreement with OSHA.

ARGUMENT

The United States Supreme Court has appellate jurisdiction over cases originating in state courts. U.S. Const. Art. III, §2, cl. 2. In reviewing state court decisions, the Court may exercise plenary review over constitutional questions involving protected individual rights. Bose Corp. v. Consumers Union, 466 U.S. 485, 499 (1984). The right to due process is one of these rights.

I. The Pennsylvania state courts lacked subject matter jurisdiction over Smith's case.

In order for a court to have subject matter jurisdiction over a case, required filings and responses must be timely or subject matter jurisdiction is divested. See Carlisle v. United States, 517 U.S. 416 (1996).

In the instant case, Respondent Consolidated Freightways filed an untimely notice of denial regarding Petitioner Steven Smith's original claim. Under the Pennsylvania Workers' Compensation Act, an employer must file a response within 20 days of the Petitioner's claim. Workers' Compensation Act, 77 P.S.A. §771. Although Smith filed his initial claim on May 12, 1996, Respondent Employer did not file its answer until July 3, 1996. This effectively divests the workers' compensation judge, and all subsequent courts, of subject matter jurisdiction.

II. The Pennsylvania state courts violated Smith's Fourteenth Amendment due process rights.

"[No state shall] deprive any person of life, liberty, or property, without due process of law . . ." U.S. Const. amend. XIV.

Procedural due process rules are meant to protect persons . . . from the mistaken or unjustified deprivation of life, liberty, or property. Thus, in deciding what process constitutionally is due in various contexts, the Court repeatedly has emphasized that "procedural due process rules are shaped by the risk of error inherent in the truth-finding process . . . ." *Mathews v. Eldridge*, 424 U.S. 319, 344, 96 S.Ct. 893, 907, 47 L.Ed.2d 18 (1976). Such rules "minimize substantively unfair or mistaken deprivations of" life, liberty, or property by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests. *Fuentes v. Shevin*, 407 U.S., at 81, 92 S.Ct., at 1994.

A. The Pennsylvania state court violated Steven Smith's due process rights when it failed to consider relevant evidence.

October 15, 1997 Order, WCJ acknowledged Petitioner's "exposure" to a poisonous chemical but dismissed the Claim Petition based on Respondent's expert report from a non-examining MD and holding that "burden of proof" was born by Petitioner. WCJ considered no Bureau Exhibits filed by the parties.

FF#1 erred on the date of injury and the identification of the specific chemical that caused the injury.

FF#6 that Petitioner: "*... treated at a local emergency room and later consulted several physicians.*" fails to attribute Petitioner's medical

treatment to the panel providers or Respondent's OSHA settlement.

FF#10 materially misquoted the September 1996 report of Petitioner's treating pulmonary physician, Dr. Nellhaus, in finding no relationship between the chemical exposure and Petitioner's respiratory injury.

> "I can say with a reasonable degree of medical certainty that the exposure of this chemical was temporally related to the onset of this patient'srespiratory complaints. The exposure did subject the patient to a period of disability; I would not expect this disability to be permanent, however."
>
> Dr. Nelhaus

FF#12 materially misquoted Respondent's expert, who relied upon "*absence of literature*" as opposed to finding Respondent's expert *"reviewed literature*." Further, the WCJ materially misquoted Respondent's expert by deleting the word "known" (i.e.) a hiatal hernia as purported source of Petitioner's symptoms.

FF#13 quoted and relied on a 12/18/96 medical report never admitted into evidence and not listed as an exhibit. Additionally, medical reports were given the same evidentiary weight as cross-examined expert testimony. Petitioner's Counsel registered a record hearsay objection to admission of the expert report, which Respondent never cured. The WCJ failed to incorporate Petitioner's hearsay objection when it relied upon the report in its October 15, 1997 Order.

Therefore, FF#14, 15, 16 were made contrary to or absent substantial evidence that the court relied

on to support conclusions of law drawn to deny the claim.

B. The Pennsylvania state court failed to act when Employer withheld reports material to Smith's case, in violation of Smith's due process rights.

C. The Pennsylvania state court violated Smith's due process rights when it failed to act on undisputed allegations that Employer perjured itself by submitting false evidence.

September 2001, Petitioner filed a Claim, with the Pennsylvania department of labor, alleging that Respondent knowingly and fraudulently contested his Claim for Benefits in 1996 and requested a hearing to admit evidence to support Petitioner's allegations of Respondent's fraud. Petitioner reasonably alleged that self-insured Respondent/employer made a bad faith contest by refusing to pay Petitioner's wages, medical bills and attorney fees under the Act.

The Department of Labor granted Petitioner a hearing before Judge Henry in November 7, 2001, to consider Petitioner's material and non-cumulative evidence. Respondent never respond to Petitioner's allegations of fraud. The Notice to attend the hearing expressly stated that failure to address the allegations raised in the petition are deemed admissions. The court failed to permit cross-examined testimony.

March 26, 2002, the WCJ entered an Order denying the claim petition in accord with his findings of fact, which contained material errors, as follows:

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FF#2 erred in finding Respondent timely and erred in finding Respondent responsive;

FF#3 relied on J Vallely's 1997 errors of fact; FF# 4 & 5 drew legal inferences unsupported by substantive, admissible record evidence. Judge Henry did not address Respondent's failure to respond to allegations of fraud, a deemed admission, and upheld Respondent's affirmative defenses, which are supported by judicial errors of fact and inadmissible hearsay, to deny Petitioner's claim.

July 29, 2003, the WCAB entered an Opinion and Order, which upheld Respondent's affirmative defenses and noted Petitioner's failure to Request a Section 426 Rehearing within eighteen (18) months.

D. The Pennsylvania state court violated Smith's due process rights when it failed to entertain an appeal of Smith's claim.

As the above illustrations have shown, Smith was denied due process at the initial stages of his workers' compensation proceedings. Appellate review may have corrected the denial of his due process rights and the errors made by the Workers' Compensation Court. However, the Pennsylvania Supreme Court declined to hear Smith's appeal, merely continuing the pattern of deprivation. (See Appendix at 24, 25).

III. The Pennsylvania state courts erred when they failed to enforce an agreement between Respondent and the Department of Labor mandating OSHA compliance.

Petitioner's union failed its duty to seek enforcement of the rights and duties of the parties under contracts and agreements with Respondent, an apparent conflict of interest by trustees of the union's health and welfare ERISA plan, where Petitioner was unable to get a hearing before the grievance committee due to correspondence by Respondent's

management employee trustee and the union's business agent trustee.

The union's failure to investigate Petitioner's claim or to grant him a grievance hearing was fatal to Petitioner's claim. Self-insured Respondent and the union's ERISA plan realized economic benefit, at Petitioner's expense.

Respondent violated its settlement agreement, to comply with 29 CFR 1910.1200, federal regulation of exposure to toxic and hazardous substance, by refusing to pay for Petitioner's medical treatment.

Respondent, by refusing to treat Petitioner for chemical exposure and withholding MSDS information on a federally regulated "right to know" chemical, violated Petitioner's rights under:

9) the workers' compensation act,
10) state and federal transportation regulations,
11) the hazardous material "right to know" law,
12) its settlement agreement with OSHA,
13) its Union contract,
14) the Union Constitution,
15) Petitioner's employee ERISA benefits,
16) a court order in WDPA at 78 cv 791 H, enforcing National Master Freight Agreement.

The state courts prejudiced Petitioner by failing to enforce Respondent's agreement with OSHA.

For the foregoing reasons, because this case involves deciding the scope of due process rights under the Fourteenth Amendment and because this case implicates the effect of government-private agreements as law, Petitioner requests that this Honorable Court grant a writ of Certiorari in the instant matter.

Respectfully submitted,

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Supreme Court, U.S.
FILED
JUN 24 2005
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(6)

No. 05-4

APPENDIX

In The

Supreme Court of the United States

Steven Smith,

Petitioner

v.

Consolidated Freightways, Inc.,

Respondents

On Petition for *Writ of Certiorari*
To the Supreme Court of Pennsylvania

Appendix to Petition for *Writ of Certiorari*

Mary Ellen Chajkowski, Esq.
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412-904-2222

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OPINIONS AND ORDERS BELOW

March 26, 2002

Commonwealth of Pennsylvania
Department of Labor and Industry
Bureau of Workers' Compensation

Steven Smith, claimant
v. **No. 658011**
Consolidated Freightways

RECORD

The claimant, Steve Smith, filed an original claim petition with the Bureau on May 15, 1996. In his petition, the claimant alleged that on May 28, 1996, he was exposed to the chemical trichloroethane while unloading a trailer in the course of his duties as a truck driver. Consolidated Freightways, the defendant, filed a timely, responsive answer to this petition. Pursuant to a Decision and Order circulated on October 16, 1997, the claimant's prior claim petition was denied by workers' compensation Judge Kathleen Vallely. In that Decision and Order, Judge Vallely found that although the claimant had established that he was exposed to trichloroethane while in the course of his employment, he failed to meet his burden of proving that he sustained any injury or disability as a result of that exposure. This Decision and Order was affirmed by the Workers' Compensation Appeal Board in an order dated December 31, 1999.

The claimant filed a new claim petition which was received by the Bureau on September 27, 2001. In this new petition, the claimant again alleges that he sustained a work-related injury on February 28, 1996, while in the course of his employment with the defendant. The claimant again alleges an injury due to chemical exposure while employed as a truck driver. The defendant again filed a responsive answer, not only denying all the substantive allegations, but also arguing that the present claim petition is precluded based

upon the earlier determination of Judge Vallely.

At the hearing held in this matter in November 7, 2001, claimant's counsel argued that they should not be precluded from refiling this petition, as the defendant was guilty of fraud. This allegation is based on the claimant's contention that the defendant failed t turn over certain material data safety sheets for the chemicals to which the claimant was exposed while driving a truck while in their employment. Claimant argues that if they had this material, the outcome of the earlier proceeding would have clearly been different. The defendant again raised the issue of res judicata and collateral estoppel, and argued that this petition should be dismissed.

I find the arguments advanced by the claimant to be withheld from merit. Even if the defendant had the material data safety sheet in its possession at the time of the original proceeding, and failed to turn it over, I find this had no material consequent to the earlier proceeding. I note that in her decision, Judge Vallely found, in fact, that the claimant was exposed to the chemical trichloroethane. However, she further found that the medical evidence of record failed to establish the claimant suffered any injury or any disability as a result of this exposure. She based this finding on her determination that the opinions offered by the defendant's physician, Dr. Guzzardi were more credible than the opinions offered by the claimant's physician. In fact, she found the opinions offered by the claimant's physicians to be equivocal in linking any exposure to any disability that the claimant may have suffered. Dr. Guzzardi opined that claimant did not suffer any pulmonary problems as a result of his exposure, and in fact, his then current symptoms were caused by reflux due to his non work-related hiatal hernia. Therefore, the potential effects of the chemical to the claimant are immaterial. Not only that, as the claimant knew of the chemical to which he was exposed, knowledge of all its adverse effects were as readily available to him as to anyone else. He could have hired his own toxic expert to testify as to the effects of the chemical, but chose not to do

so. In addition, as Judge Vallely found that his symptoms were then related to a non-work-related condition, it does not matter what he was exposed to at work, or at least, what the material safety data sheets had to say of that chemical.

Based upon the above considerations, I found the allegations contained in the new petition to be no different than those addressed by Judge Vallely in her earlier determination. I found nothing in the evidence submitted by the claimant in support of this new petition that would warrant re-opening this matter to litigation. Therefore, the current petitions will be dismissed.

FINDINGS OF FACT

1. The claimant filed an earlier claim petition with the Bureau on November 15, 1996. In that petition, the claimant alleged that he was exposed to the chemical trichloroethane, causing a work-related injury, while in the course of his employment with the defendant.
2. The defendant filed a timely, responsive answer, denying the substantive allegations contained in the claimant's original claim petition.
3. Pursuant to a decision and order circulated on October 16, 1997, by Workers' Compensation Judge Kathleen Vallely, the claimant's earlier claim petition was denied. Judge Vallely found that although the claimant did meet his burden of proving that he was exposed to the chemical trichloroethane, he failed to establish any injury or disability as a result of that exposure. This determination was affirmed by the Workers' Compensation Appeal Board.
4. The claimant filed new claim petitions, which were received by the Bureau on September 27, 2001. In this new filing, the claimant alleges that he should now be able to proceed on his original Claim Petition, based upon an allegation that the defendant engaged in fraud in failing to turn over certain material safety data sheets to the claimant which were in the defendant's possession at the time of the original

litigation.

5. Taken as a whole, I find that the evidence of record fails to establish that this matter should be reopened for relitigation. I based this finding of the following considerations. In the earlier determination, it was found that the claimant was exposed to the chemical trichloroethane, but that he had failed to establish any injury or disability as a result of that exposure. This finding was based on the judge's earlier determination that the defendant's expert was more credible than the claimant's expert. That expert had found that the claimant, although he may have been exposed to this chemical, did not suffer any respiratory or pulmonary injury as a result of that problem. In addition, the doctor found that the claimant's condition was related to a non-work-related pre-existing hiatal hernia. Based on those determinations the earlier claim petition was denied.

   Even if the defendant had the MSDS in its possession, and failed to turn it over to the claimant, it would not have changed the outcome of the earlier proceedings. The judge already found that the claimant was exposed to that chemical, but found that there was no adverse effect as a result of that exposure. In fact, she relied upon the doctor's opinion that his symptoms were related to a non work-related condition. Therefore, there is no legitimate reason to reopen this matter.

CONCLUSIONS OF LAW

1. The issues raised by the claimant in his current filing are identical to those which were resolved in the prior determination made by Judge Vallely. Therefore, the claimant is precluded from relitigating those issues based on the doctrines or res judicata and collateral estoppel. Therefore, these petitions must be denied.

ORDER

AND NOW, this 15th day of March, 2002, the claim petitions filed by the claimant, and received by the Bureau on September 27, 2001, are hereby denied in accordance with the above findings of fact and conclusions of law.

/s/ David W. Henry, Workers' Compensation Judge

Commonwealth of Pennsylvania
Department of Labor and Industry
Bureau of Workers' Compensation

Steven Smith, claimant
v.
Consolidated Freightways

HEARINGS: 7/25/96; record made
11/13/96; record made

CLAIMANT'S WITNESSES & EXHIBITS:
Steven Smith, claimant

1. Power of attorney
2. Records of Norman J. Frey, III, D.O.
3. 5/28/96 Report of Kurt M. Nellhaus, M.D.
4. Pulmonary function report
5. Correspondence of OSHA
6. 9/24/96 report of Kurt M. Nellhaus, M.D.
7. Bill of costs

EMPLOYER'S WITNESSES AND EXHIBITS:

1. 10/26/96 report of Lawrence J. Guzzardi, M.D.
2. 5/28/96 report of Kurt M. Nellhaus, M.D.
3. Medical office notes
4. Pulmonary function report
5. Radiology report
6. HAPPI Center records
7. 2/25/97 correspondence of Mr. Buggy

BUREAU EXHIBITS: None

FINDINGS OF FACT

1. The claimant, Steven Smith, filed a claim petition with the Bureau on May 15, 1996. The petition averred that on May 28, 1996, the claimant was exposed to the chemical "trichloroethane" while unloading a trailer in the course of his duties as a

truck driver. The accident report was completed by the claimant and given to the employer the next day. Total disability benefits were requested from April 12, 1996 to an indefinite period, but later amended to reflect a closed period to September 24, 1996. Payment of medical bills and counsel fees were also requested.

2. The employer, who is self-insured, filed a very detailed responsive answer, generally denying all critical averments of the petition. Several other affirmative defenses were raised, including that the alleged injury was not work-related.
3. The claimant appeared and testified at the initial hearing in this matter. He stated that he was 59 years of age, and had worked as a union truck driver/salesman for the employer, a common carrier. Claimant would ordinarily load and unload his truck and transport freight to various locations for defendant employer.
4. On February 28, 1996, the claimant reported to the employer's terminal according to his normal routine to pick up his truck and make his deliveries. The claimant made two deliveries when he noticed one of the three white cartons he was carrying was leaking. The claimant testified that the smell from this material burned his throat and caused him to become nauseated.
5. Claimant exited the trailer and contacted his employer because of his concerns over the toxicity of the material. He was instructed to secure the cartons, and return to the terminal. The claimant finished the rest of the work date. He returned to work the following week, and then took an extended overseas vacation.
6. Eventually, the claimant learned he was exposed to the chemical "trichloroethane." He asserted it was a hazardous material and was not aware he was carrying it on the date of his exposure. The claimant stopped working on April 23, 1996 because of his

shortness of breath and coughing. The claimant treated at a local emergency room and later consulted several physicians. As of the date of the first hearing, the claimant said that he takes medications, uses an inhaler, has a continuous sour taste in his mouth and cannot drink alcohol. Claimant received no medical treatment between February 28, 1996 and April 12, 1996 for symptoms he believes were associated with the work-related chemical exposure.

7. The claimant also testified on cross-examination that he had applied for a retirement pension in April of 1996. As of August 1, 1996, the claimant is currently collecting pension benefits in the amount of $2004.00 a month.
8. Since this is a claim for a closed period under 52 weeks, both parties offered reports of several physicians. Claimant offered two reports of Dr. Kurt M. Nellhaus, a pulmonary specialist, dated May 28, 1996, and September 24, 1996. Dr. Nellhaus reported that he first saw the claimant on May 28, 1996 by referral from Dr. Norman Frey. The claimant presented with the chief complaints of shortness of breath and a productive type cough.
9. Dr. Nellhaus noted on physical exam that the claimant had clear lungs, a normal heart and normal pulmonary function. Claimant treated with a course of corticosteroids. The September 24, 1996 report of Dr. Nellhaus stated that the claimant had additional complaints of nausea, vomiting and heartburn. Besides reiterating his prior report's physical findings. subsequent chest x-rays were read as normal, and an upper GI found the claimant to have a hiatal hernia. Dr. Nellhaus also performed a bronchoscopy on June 19, 1996 and opined the claimant had non-specific bronchitis without evidence of inhalation injury. As of September 16, 1996, Dr. Nellhaus opined the claimant was asymptomatic.
10. Dr. Nellhaus diagnosed the claimant as having a

reactive airway dysfunction, possibly precipitated by exposure to trichloroethane. He further opined that the claimant was subjected to a period of disability, but it was not permanent in nature.

11. The claimant also offered and April 4, 1996 report of OSHA addressed to the claimant in response to his formal complaint of chemical exposure. It states that the employer was cited for violation of OSHA regulations for failing to maintain chemical data sheets and failure to label items properly.
12. The employer offered the October 26, 1996 report of Dr. Lawrence J. Guzzardi, Board-certified in family practice, emergency medicine and toxicology. Dr. Guzzardi reviewed the claimant's records and the most current literature on the chemical trichloroethane. Dr. Guzzardi opined that the claimant's exposure to the chemical was transient, the chemical is common, and no known cases of exposure to trichloroethane causing pulmonary problems could be found. He also opined that the claimant had no objective evidence of injury following exposure and that his current complaints are caused by reflux due to his hiatal hernia.
13. The employer also offered a December 18, 1996 from Dr. George Schein. Dr. Schein reported that the claimant's nasal passages were normal, and a CT scan of his sinuses showed no chemical exposure damage. He also opined that claimant had no pathology showing chemical exposure.
14. After a thorough review of the testimony of the claimant, the circumstances during and after the trichloroethane exposure, and the medical reports offered, I find as fact that the claimant has not established through unequivocal medical evidence that he suffered a period of disability causally related to exposure to the chemical trichloroethane.
15. I specifically find that the reports of Dr. Nellhaus are equivocal. He distinctly noted a "possibility" of